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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GLEN R. HAGEN, Plaintiff, vs. NCR CORPORATION, a Maryland Corporation, and DOES 1 through 100, Defendants.	Case No. 07 CV-2205 DMS (CAB) **DEFENDANT NCR CORPORATION'S ANSWER TO PLAINTIFF GLEN R. HAGEN'S FIRST AMENDED COMPLAINT**

Defendant NCR CORPORATION ("NCR" or "Defendant") hereby answers Plaintiff GLEN R. HAGEN'S ("Plaintiff") First Amended Complaint and states as follows:

THE PARTIES

1. Based upon current knowledge and information, Defendant admits that Plaintiff is an individual residing in the State of California, County of San Diego.

2. Based upon current knowledge and information, Defendant admits that it is a Maryland corporation qualified to do business in the State of California, with a place of business located in the County of San Diego.

3. Paragraph 3 contains Plaintiff's legal argument and conclusions, which Defendant is either not required to admit or deny or about which Defendant

lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 3.

4. Paragraph 4 contains Plaintiff's legal argument and conclusions, which Defendant is either not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 4.

JURISDICTION AND VENUE

5. Based upon current knowledge and information, Defendant admits Plaintiff has received a Right To Sue Letter. Defendant denies each and every other allegation contained in paragraph 5, and specifically denies that Plaintiff has timely exhausted his administrative remedies with respect to his Fair Employment and Housing Act [FEHA] cause of action.

6. Based upon current knowledge and information, Defendant admits Plaintiff resides in the County of San Diego. Defendant denies all other allegations contained in paragraph 6 of the complaint and specifically denies that the Superior Court of California for the County of San Diego has jurisdiction over the parties. Based upon current knowledge and information, Defendant further denies that it engaged in any wrongful act.

7. Based upon current knowledge and information, Defendant denies each of the allegations contained in Paragraph 7. Specifically, Defendant denies the Superior Court of California for the County of San Diego has jurisdiction over the parties. Defendant further denies it was incorporated in California and denies it has a principle place of business in California. Based upon current knowledge and information, Defendant denies any wrongful act.

8. Based upon current knowledge and information, Defendant denies each of the allegations contained in Paragraph 8. Specifically, Defendant denies the Superior Court of California for the County of San Diego has jurisdiction over

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the parties. Defendant denies it was incorporated in California and denies it has a principle place of business in California.

FACTUAL BACKGROUND

9. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 9 and, based thereon, denies each and every allegation in Paragraph 9.

10. Defendant admits Plaintiff was first employed in October 1973 and was a member of the Software Development Group until his transfer to the Packaging Group in 2004. Based upon current knowledge and information, Defendant denies the remaining allegations in Paragraph 10.

11. Defendant admits Plaintiff received performance reviews while employed at NCR. Based upon current knowledge and information, Defendant denies the remaining allegations in Paragraph 11.

12. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 12 and, based thereon, denies each and every allegation in Paragraph 12.

13. The allegations in Paragraph 13 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 13.

14. The allegations in Paragraph 14 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 14.

15. The allegations in Paragraph 15 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 15.

16. The allegations in Paragraph 16 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 16.

17. The allegations in Paragraph 17 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 17.

18. The allegations in Paragraph 18 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 18.

19. The allegations in Paragraph 19 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 19.

20. The allegations in Paragraph 20 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 20.

21. Defendant denies each and every allegation in Paragraph 21.

22. Defendant admits Plaintiff received a performance review on or about February 23, 2005, and admits the contents of the performance review. Based upon current knowledge and information, Defendant denies the remaining allegations in Paragraph 22.

23. Defendant admits Plaintiff received a performance review on or about March 3, 2006, and admits the contents of the performance review. Based upon current knowledge and information, Defendant denies the remaining allegations in

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Paragraph 23.

24. Defendant denies each and every allegation in Paragraph 24.

25. Defendant admits Plaintiff received a performance review on or about March 3, 2006, and admits the contents of the performance review. Based upon current knowledge and information, Defendant denies the remaining allegations in Paragraph 25.

26. The allegations in Paragraph 26 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 26.

27. The allegations in Paragraph 27 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 27.

28. Defendant denies each and every allegation in Paragraph 28.

29. The allegations in Paragraph 29 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 29.

30. The allegations in Paragraph 30 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 30.

31. The allegations in Paragraph 31 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 31.

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32. The allegations in Paragraph 32 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 32.

33. Defendant admits it delivered the "Reduction-in-Force" letter to Plaintiff on or about March 10, 2006, and admits the contents of the letter. Based upon current knowledge and information, Defendant denies the remaining allegations in Paragraph 33.

FIRST CAUSE OF ACTION

AGE DISCRIMINATION IN VIOLATION OF FEHA

(Against Defendant NCR Corporation and DOES 1 through 100)

34. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 34 and, based thereon, denies the allegations in Paragraph 34.

35. Defendant admits the allegations in Paragraph 35.

36. Defendant admits the allegations in Paragraph 36.

37. Defendant admits the allegations in Paragraph 37.

38. The allegations in Paragraph 38 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 38.

39. Defendant denies each and every allegation in Paragraph 39.

40. The allegations in Paragraph 40 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 40.

41. The allegations in Paragraph 41 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 41.

42. The allegations in Paragraph 42 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 42.

43. The allegations in Paragraph 43 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 43.

44. The allegations in Paragraph 44 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 44.

45. The allegations in Paragraph 45 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 45.

SECOND CAUSE OF ACTION

DISABILITY DISCRIMINATION IN VIOLATION OF FEHA

(Against Defendant NCR Corporation and DOES 1 through 100)

46. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 46 and, based thereon, denies the allegations in Paragraph 46.

47. Defendant admits the allegations in Paragraph 47.

48. Defendant admits the allegations in Paragraph 48.

49. The allegations in Paragraph 49 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 49.

50. The allegations in Paragraph 50 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 50.

51. The allegations in Paragraph 51 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 51.

52. The allegations in Paragraph 52 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 52.

53. The allegations in Paragraph 53 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 53.

54. The allegations in Paragraph 54 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 54.

55. The allegations in Paragraph 55 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 55.

56. The allegations in Paragraph 56 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 56.

THIRD CAUSE OF ACTION

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

(Against Defendant NCR Corporation and DOES 1 through 100)

57. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 57 and, based thereon, denies the allegations in Paragraph 57.

58. Defendant admits the allegations in Paragraph 58.

59. Defendant denies each and every allegation in Paragraph 59.

60. The allegations in Paragraph 60 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 60.

61. The allegations in Paragraph 61 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 61.

62. The allegations in Paragraph 62 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 62.

63. The allegations in Paragraph 63 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 63.

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FOURTH CAUSE OF ACTION

BREACH OF IMPLIED CONTRACT NOT TO TERMINATE EXCEPT FOR JUST CAUSE

(Against Defendant NCR Corporation and DOES 1 through 100)

64. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 64.

65. The allegations in Paragraph 65 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 65.

66. The allegations in Paragraph 66 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 66.

67. The allegations in Paragraph 67 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 67.

68. The allegations in Paragraph 68 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 68.

69. The allegations in Paragraph 69 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 69.

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70. The allegations in Paragraph 70 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 70.

71. The allegations in Paragraph 71 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 71.

FIFTH CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(Against Defendant NCR Corporation and DOES 1 through 100)

72. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 72.

73. The allegations in Paragraph 73 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 73.

74. The allegations in Paragraph 74. contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 74.

75. The allegations in Paragraph 75. contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 75.

76. The allegations in Paragraph 76 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 76.

SIXTH CAUSE OF ACTION

INVASION OF PRIVACY

(Against Defendant NCR Corporation and DOES 1 through 100)

77. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 77.

78. The allegations in Paragraph 78 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 78.

79. The allegations in Paragraph 79 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 79.

80. The allegations in Paragraph 80 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 80.

81. The allegations in Paragraph 81 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 81.

82. The allegations in Paragraph 82 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 82.

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83. The allegations in Paragraph 83 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 83.

84. The allegations in Paragraph 84 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 84.

85. The allegations in Paragraph 85 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 85.

86. The allegations in Paragraph 86 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 86.

SEVENTH CAUSE OF ACTION

DEFAMATION

(Against Defendant NCR Corporation and DOES 1 through 100)

87. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 87.

88. The allegations in Paragraph 88 contain Plaintiff's legal argument and conclusions, which either Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 88.

89. The allegations in Paragraph 89 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 89.

90. The allegations in Paragraph 90 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 90.

91. The allegations in Paragraph 91 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 91.

92. The allegations in Paragraph 92 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 92.

93. The allegations in Paragraph 93 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 93.

94. The allegations in Paragraph 94 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 94.

EIGHTH CAUSE OF ACTION

NEGLIGENT SUPERVISION

(Against Defendant NCR Corporation and DOES 1 through 100)

95. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 95.

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96. The allegations in Paragraph 96 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 96.

97. The allegations in Paragraph 97 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 97.

98. The allegations in Paragraph 98 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 98.

NINTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against Defendant NCR Corporation and DOES 1 through 100)

99. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 and, based thereon, denies the allegations in Paragraph 99.

100. The allegations in Paragraph 100 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 100.

101. The allegations in Paragraph 101 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 101.

102. The allegations in Paragraph 102 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 102.

103. The allegations in Paragraph 103 contain Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny, and based thereon, Defendant denies each and every allegation in Paragraph 103.

104. Paragraph A of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

105. Paragraph B of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

106. Paragraph C of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

107. Paragraph D of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

108. Paragraph E of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which

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Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

109. Paragraph F of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

110. Paragraph G of Plaintiff's Prayer contains Plaintiff's legal argument and conclusions, which Defendant is not required to admit or deny or about which Defendant lacks sufficient knowledge and information to admit or deny. Notwithstanding, and based on current knowledge and information, Defendant denies each and every allegation in this paragraph of the Prayer.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses which, except where otherwise indicated, are being asserted as to each and every cause of action in Plaintiffs' First Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that the First Amended Complaint, and each cause of action therein, fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's causes of action are barred by the statutes of limitations, including those set forth in Code of Civil Procedure sections 335.1, 340, and 342, as well as Government Code sections 911.2, 945.4, 945.6, 950, 950.2, 950.6, and any other applicable statute of limitations and/or the doctrine of laches.

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THIRD AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that some or all of Plaintiff's claims are barred because Plaintiff has failed to exhaust required contractual, administrative, judicial, and/or quasi-judicial remedies.

FOURTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff failed and continues to fail to engage in the interactive process to determine whether he can perform the essential functions of his employment with reasonable accommodation.

FIFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff was not disabled. In the event Plaintiff was disabled, Plaintiff did not notify Defendant he had a disability and that Defendant did not regard Plaintiff as having a disability during any time before Plaintiff was notified he would be subject to a Reduction in Force.

SIXTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff was not treated disproportionately because of his age.

SEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that, to the extent Plaintiff was an employee of Defendant, Plaintiff's employment was at-will.

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's First Amended Complaint and each and every cause of action alleged therein are barred or any recovery is reduced by the doctrine of after-acquired evidence.

NINTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that it has taken no action and made no omission that violated or sought to violate any statutory or constitutional right relating to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that their actions involving Plaintiff, if any, were based solely on legitimate, good-faith, non-discriminatory, non-retaliatory, business reasons.

ELEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that it exercised reasonable care to prevent and promptly correct any alleged improper conduct and that Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to otherwise avoid harm.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's causes of action are barred in whole or in part because of the failure to perform a necessary condition precedent.

THIRTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff has suffered no damages as a result of any alleged act or omission of Defendant, and that Plaintiff has failed to mitigate his damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's causes of action are barred by the doctrines of waiver, estoppel, and unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's causes of action are barred by reason of the fact that Plaintiff has engaged in acts and courses of conduct which rendered Plaintiff *in pari delicto*.

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SIXTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff had no right to privacy, and in the event Plaintiff did have a right to privacy, that right was waived as a result of Plaintiff's own actions, statements, or disclosures to third parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any statements or representations made by Defendant, about Plaintiff were objectively and subjectively truthful, and thus such statements are neither defamatory nor otherwise wrongful.

EIGHTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any statements or representations made by Defendant about Plaintiff were based on opinion and were made in good faith, and thus, such statements are neither defamatory or otherwise wrongful.

NINETEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that if any damages or injuries were in fact suffered by Plaintiff, such damages or injuries must be reduced or diminished by amounts received or receivable by Plaintiff in the exercise of reasonable diligence as income or in lieu of earned income or as benefits.

TWENTIETH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that the injuries or damages alleged by Plaintiff, if any, were the result of preexisting conditions that are unrelated to any conduct of Defendant.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any injuries or damages alleged by Plaintiff, if any, were the result of new,

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independent, intervening, or superseding causes that are unrelated to any conduct of Defendant. Any action on the part of Defendant was not the proximate or producing cause of any alleged injuries or damages Plaintiff claims to have suffered.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any injuries or damages alleged by Plaintiff, if any, were caused, in whole or in part, by the acts or omissions of others, for whose conduct Defendant is not responsible.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any unlawful or other wrongful acts attributed to any person(s) employed by Defendant were outside the scope of their authority and such acts, if any, were not authorized, ratified or condoned by Defendant nor did Defendant know or have reason to be aware of such alleged conduct.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that any injuries or damages alleged by Plaintiff were caused, in whole or in part, by the acts or omissions of Plaintiff and, accordingly, Plaintiff's causes of action are barred or reduced by Plaintiff's own participation in, consent to, and/or comparative fault relating to the acts complained of in the First Amended Complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that the First Amended Complaint fails to state facts upon which attorneys' fees can be awarded.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that this suit is frivolous, unreasonable, or without foundation and, as a result, Defendant is entitled to recover its costs and attorney's fees from Plaintiff, and hereby seeks that recovery.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendants presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendant reserves the right to assert additional defenses in the event discovery indicates they would be appropriate.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, any statements made by Defendants about Plaintiff are privileged pursuant to California Civil Code Section 47(c).

JURY DEMAND

Defendant herein demands a trial by jury as to all issues contained in Plaintiff's Complaint.

WHEREFORE, Defendant respectfully requests that Plaintiff take nothing by way of any of his claims, that this action be dismissed with prejudice to the re-filing of same, that Defendant recovers its costs and attorneys' fees incurred in this matter, and that Defendant be granted such other and further relief to which it may be justly entitled.

Dated: January 7, 2008

GORDON & REES LLP

By: [signature]
Miles D. Scully
Jason R. Dawson
Camille Joy DeCamp
Attorneys for Defendant
NCR Corporation

Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO	COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Telephone No. M.D. Scully (SBN: 135853) Tel: (619) 696-6700 Jason R. Dawson (SBN: 208906) Fax: (619) 696-7124 GORDON & REES LLP 101 West Broadway, Suite 1600 San Diego, CA 92101	
SHORT CASE TITLE GLEN R. HAGEN v. NCR CORPORATION	JUDGE: J. RICHARD STRAUSS DEPT: 75
ATTORNEYS FOR CROSS-DEFENDANTS CALIFORNIA COUNTRY CLUB HOMEOWNERS ASSOCIATION and CAROLINE ALTMAN	Court Case No. 37-2007-00073587-CU-WT-CTL

PROOF OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause. My business address is 101 West Broadway, Suite 2000, San Diego, California 92101.

On January 7, 2008, I served the following document(s):

DEFENDANT NCR CORPORATION'S ANSWER TO PLAINTIFF GLEN R. HAGEN'S FIRST AMENDED COMPLAINT

by placing a copy thereof in a separate envelope for each addressee named hereafter and addressed as follows:

Thomas R. Gill The Gill Group, A.P.C. 6046 Cornerstone Ct. W Suite 161 San Diego, CA 92121	

(X) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

(X) **BY FAX.** In addition to service by mail as set forth above, a copy of said document was also delivered by facsimile transmission to the addressee(s) above pursuant to Code of Civil Procedure §1013(e).

( ) **BY PERSONAL SERVICE.** I caused said document(s) to be hand-delivered to the addressee pursuant to Code of Civil Procedure §1011.

( ) **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.** I am familiar with this firm's practice of collection and processing correspondence for certified mailing, return receipt requested with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §877.6.

( ) **BY ELECTRONIC TRANSMISSION.** I caused said document(s) be served via electronic transmission to the addressee(s) listed above on the date below pursuant to Code of Civil Procedure § 1010.6(6).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 7, 2008.

Kimberly Lasky

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